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AMANAH RAYA BHD

v.

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RAJA RAJMAH RAJA CHIK & ORS;
RAJA DELILA RAJA NONG CHIK & ORS
(INTERVENERS)

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COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
SULONG MATJERAIE JCA
RAMLY ALI JCA
[CIVIL APPEAL NO: W-02-432-2004]
8 MAY 2009

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CIVIL PROCEDURE: *Intervention - Application for - Test to be applied for granting or refusing leave to intervene - Whether established by applicants - Rules of the Court of Appeal 1994, r. 4 - Rules of the High Court 1980, O. 15 r. 6(3)*

E

CIVIL PROCEDURE: *Parties - Intervention - Application for - Test to be applied for granting or refusing leave to intervene - Whether established by applicants - Rules of the Court of Appeal 1994, r. 4 - Rules of the High Court 1980, O. 15 r. 6(3)*

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CIVIL PROCEDURE: *Appeal - Leave to intervene - Application for - Test to be applied - Whether established by applicants - Rules of the Court of Appeal 1994, r. 4 - Rules of the High Court 1980, O. 15 r. 6(3)*

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This was an application by the proposed interveners/applicants seeking leave to intervene in this appeal as the second to sixth appellants.

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Held (allowing the application)
Per Low Hop Bing JCA delivering the judgment of the court:

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(1) As the Rules of the Court of Appeal 1994 ('RCA') made no provision to regulate the instant application, r. 4 of the RCA mandates that the Rules of the High Court 1980 ('RHC') shall apply *mutatis mutandis*. O. 15 r. 6(3) of the RHC sets out the test for granting or refusing leave to intervene. For this purpose, an applicant must show his interest in the cause or matter in dispute or, as the case may be, the question or issue to be determined as between him and any party to the

cause or matter. It was common ground that the applicants herein were the lawful beneficiaries of the estate of the deceased in question and that they had beneficial interest in that estate. This beneficial interest was clearly and directly related to the subject matter of the instant appeal. The applicants' right against liability to the other parties, who also included the other lawful beneficiaries of the same estate, would be directly affected by any order which may be made in this appeal. There could be no doubt that the applicants had fulfilled the test of establishing their interest for the purposes of obtaining leave to intervene. (paras 2, 3 & 4)

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Bahasa Malaysia Translation Of Headnotes

Ini adalah permohonan oleh pencelah-pencelah yang dicadangkan/pemohon-pemohon menuntut kebenaran untuk mencelah dalam rayuan ini sebagai perayu-perayu kedua hingga keenam.

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Diputuskan (membenarkan permohonan)

Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) Oleh kerana Kaedah-kaedah Mahkamah Rayuan 1994 ('KMR') tidak membuat apa-apa peruntukan untuk mengawalselia permohonan semasa, k. 4 KMR bermandat bahawa Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT') akan digunakan *mutatis mutandis*. A. 15 k. 6(3) KMT menetapkan ujian untuk memberi atau menolak kebenaran untuk mencelah. Bagi tujuan ini, seseorang pemohon mesti membuktikan kepentingannya dalam kausa atau perkara yang dipertikaikan atau, mengikut keadaan, soalan atau isu yang akan ditentukan di antara beliau dan mana-mana pihak kepada kausa atau perkara itu. Ia adalah titik persamaan bahawa pemohon-pemohon di sini merupakan benefisiari sah estet si mati yang berkenaan dan bahawa mereka mempunyai kepentingan benefisial dalam estet itu. Kepentingan benefisial ini jelas dan secara terus berhubungan kepada isi rayuan semasa. Hak pemohon-pemohon terhadap liabiliti kepada pihak-pihak lain, yang juga termasuk benefisiari-benefisiari sah lain estet yang sama, akan dijejaskan oleh apa-apa perintah yang mungkin akan dibuat dalam rayuan ini. Tidak terdapat apa-apa keraguan bahawa pemohon-pemohon telah memenuhi ujian membuktikan kepentingan mereka bagi tujuan memperoleh kebenaran untuk mencelah.

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- A Case(s) referred to:**
Inai Etike Sdn Bhd v. Mohd Fadzil Wadi & Ors [1995] 1 LNS 294 HC (*refd*)
Oscam SPA v. Overseas Union Bank (Malaysia) Bhd & Anor; Lim Keng Siew & Anor (Third Parties) [1999] 3 CLJ 399 HC (*refd*)
- B** *Rajoo Selvappan & Ors v. Abdul Bhari Kader Ibrahim & Ors* [2005] 7 CLJ 326 HC (*refd*)
Sanders Lead Co Inc v. Entores Metal Brokers Ltd [1984] 1 WLR 452 (*refd*)
Soo Hong & Leong Kew Moi & Ors v. United Malayan Banking Corp Bhd & Anor [1997] 2 CLJ 548 CA (*refd*)
- C** *Takang Timber Sdn Bhd v. Government of Sarawak & Anor* [1998] 3 CLJ Supp 413 HC (*refd*)
- Legislation referred to:**
Rules of the Court of Appeal 1994, r. 4
Rules of the High Court 1980, O. 15 r. 6(2)(b), (3)
- D** *For the appellant/plaintiff - M/s Shook Lin & Bok*
For the 1st, 3rd, 8th & 11th respondents/defendants - M/s Cheang & Ariff
For the 2nd respondent/defendant - M/s Khairul Azman, Noorilan, Nooron & Partners
For the 9th respondent/defendant - M/s Lee Hishamuddin
- E** *For the 10th respondent/defendant - M/s Ranjit Ooi & Robert Low*
For the 12th respondent/defendant - M/s Lim & Yeoh
For the 13th respondent/defendant - M/s Thomas Philip Kwa & Lou
For the interveners - M/s G Ragumaren & Co
- [Appeal from High Court, Kuala Lumpur; Civil Suit No: S2-22-546-1998]*
- F** *Reported by Suresh Nathan*

JUDGMENT

- G Low Hop Bing JCA:**
- [1]** This application, by way of notice of motion in encl. (19a), is filed by the proposed interveners, seeking leave to intervene in this appeal as the second to sixth appellants.
- H** **[2]** As the Rules of the Court of Appeal 1994 made no provision to regulate the instant application, r. 4 thereof mandates that the Rules of the High Court 1980 shall apply *mutatis mutandis*. In this regard, O. 15 r. 6(2)(b) of the Rules of the High Court 1980 gives the court wide discretionary powers to order
- I** any person to be added as a party ie to grant leave to intervene where:

- (i) any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined or adjudicated upon; or A
- (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between the parties to the cause or matter. B
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[3] Order 15 r. 6(3) thereof sets out the test for granting or refusing leave to intervene. For this purpose, the applicant or applicants must show his or their interest in the cause or matter in dispute or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter: *Rajoo Selvappan & Ors v. Abdul Bhari Kader Ibrahim & Ors* [2005] 7 CLJ 326 HC, at pp 331 and 332. D

[4] It is common ground that the applicants herein are the lawful beneficiaries of the estate of the deceased in question, and that they have beneficial interest in that estate. This beneficial interest is clearly and directly related to the subject matter of the instant appeal: see eg *Sanders Lead Co Inc v. Entores Metal Brokers Ltd* [1984] 1 WLR 452. The applicants' right against or liability to the other parties, who also include the other lawful beneficiaries in the same estate, would be directly affected by any order which may be made in the instant appeal. There can be no doubt that the applicants have fulfilled the test of establishing their interest for the purposes of obtaining leave to intervene: *Inai Etike Sdn Bhd v. Mohd Fadzil bin Wadi & Ors* [1995] 1 LNS 294; *Soo Hong & Leong Kew Moi & Ors v. United Malayan Banking Corp Bhd & Anor* [1997] 2 CLJ 548 CA; *Takang Timber Sdn Bhd v. Government of Sarawak & Anor* [1998] 3 CLJ Supp 413, HC; and *Oscam SPA v. Overseas Union Bank (Malaysia) Bhd & Anor; Lim Keng Siew & Anor (Third Parties)* [1999] 3 CLJ 399, HC. (Malaysian High Court Practice MLJ. Under O. 15 r. 6(2)(b).) E
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[5] We therefore unanimously allow this application and grant leave to the applicants to intervene in the instant appeal. Costs in the cause of this appeal. I